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State v. Bruce Respondent's Brief Dckt. 43913

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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43913
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2015-8777
)	
JESSE WHITEWOLF BRUCE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Bruce failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with five years fixed, upon his guilty plea to involuntary manslaughter?

Bruce Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On June 5, 2015, Bruce and his associate invited Lric Elkins “to the upstairs apartment for pizza.” (R., pp.16, 18.) Upon arriving at the upstairs apartment, Bruce “gestured to Elkins to come to the area of the bathroom ... to use drugs.” (R. p.17; PSI, p.3.) According to Bruce, Bruce stated, “I heard you were a snitch. Then [Elkins]

pushed me, I then pushed him. He hit me a few times I hit him. He started getting the best of me.” (PSI, p.3.) Bruce then stabbed Elkins in the back with a knife. (R., p.18; Tr., p.13, L.25 – p.14, L.1.)

Officers responded to the apartment after 911 received a call from “an unidentified female,” stating that there was a male in the bathtub of the apartment, and that the bathtub was “full of blood and subjects inside the apartment were attempting to obtain a tarp.” (R., p.16.) Officers “attempted contact at the door with no response.” (R., p.36.) They subsequently obtained a key and unlocked the apartment’s deadbolt; however, “the only door to the apartment had been barricaded by a bed.” (R., p.36.) The officers were able to push the bed out of the way and enter the apartment, where they discovered “a large amount of coagulated blood” and a glove in the bathtub. (R., p.36.) “Officers continued to clear the apartment and upon reaching the only bedroom,” they found Bruce and his associates, who were “hiding and non-compliant with officers’ commands.” (R., p.36.) In the corner of the bedroom, officers observed a garbage can containing a “human body wrapped in black plastic that was mostly inside the can.” (R., p.37.) The body “felt cold to the touch” and officers determined that “the human body was definitely deceased.” (R., p.37.)

When officers questioned Bruce, he claimed he was only in the apartment “for 10 minutes before officers arrived” and that he “did not use the bathroom and has never been inside the bathroom.” (R., p.17.) Bruce told officers that “he did not have anything to do with” the dead body and “implied” that his associate “was responsible for the death.” (R., p.17.) It was later determined that Elkins “died as a result of a knife wound to his back” (R., p.18) and Bruce eventually admitted that he stabbed Elkins and that his

(Bruce's) "force exceeded the nature of the fight prior to him grabbing the knife and stabbing Mr. Elkins" (Tr., p.15, Ls.10-13).

The state charged Bruce with murder in the second degree. (R., pp.128-29.) Pursuant to a plea agreement, Bruce pled guilty to a reduced charge of involuntary manslaughter. (R., pp.150-59.) The district court imposed a unified sentence of 10 years, with five years fixed. (R., pp.177-82.) Bruce filed a notice of appeal timely from the judgment of conviction. (R., pp.188-91.)

Bruce asserts his sentence is excessive in light of his methamphetamine use, status as a first-time felon, acceptance of responsibility, and family support. (Appellant's brief, pp.2-4.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for involuntary manslaughter is 10 years. I.C. § 18-4007(2). The district court imposed a unified sentence of 10 years, with five years fixed, which falls well within the statutory guidelines. (R., pp.177-82.) At sentencing, the state addressed the egregiousness of the offense, Bruce's high risk to reoffend, and the need for deterrence. (Tr., p.29, L.16 – p.32, L.10 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Bruce's sentence. (Tr., p.37, L.24 – p.41, L.14 (Appendix B).) The state submits that Bruce has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Bruce's conviction and sentence.

DATED this 15th day of July, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of July, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

Court Proceedings before Hon. Stephen S. Dunn, Judge

<p>1 didn't give -- or the PSI wasn't appropriately done. So 2 do you want more time to have anybody from the 3 defendant's family contacted? 4 THE DEFENDANT: No. 5 MR. SCHULTHIES: Are you sure? 6 THE DEFENDANT: Yeah. 7 MR. SCHULTHIES: Mr. Bruce indicates he does 8 not. 9 THE COURT: All right. 10 MR. SCHULTHIES: I think his mother's 11 statements would probably reflect what other people 12 would say if they were contacted. 13 THE COURT: Very well. Thank you very much. 14 Mr. Parris? 15 MR. PARRIS: Thank you, Your Honor. 16 Your Honor, I think what's most important to 17 the State -- I'm just going to cut right to the chase. 18 I think what's most important to the State is two 19 things: One is, is that this defendant admitted to 20 stabbing and killing a young man. And he is a high risk 21 to reoffend. Those are important factors when we look 22 at sentencing in the State of Idaho, but particularly as 23 it relates to protection of society. 24 What I've heard is I've heard him say, well, 25 this was about drugs. Who gets killed over drugs? And 29</p>	<p>1 how can you make that argument, well, it was the drugs 2 that did it? I just did it because I was high. We were 3 both high. 4 That just doesn't make any sense. People don't 5 kill each other when they do drugs. If that were the 6 case, we would have dead bodies all over the county, all 7 over every county. So the truth is it runs deeper than 8 drugs. 9 We know there was an argument. We know what 10 the defendant's admitted. We know what the witnesses 11 have told us. Essentially what we've been told is this: 12 That he was jealous because he thought the victim in 13 this case was flirting with his girlfriend. So he lured 14 him into the bathroom under the pretense of going in to 15 use, and killed him. And that's what happened. 16 It doesn't matter if it's over drugs or over 17 the girlfriend. There's nothing that rises to the level 18 of justification for killing a human being over that. 19 That is concerning to the people of this State, it's 20 concerning to the people of this county, and it's 21 concerning to the victim and her family -- or his 22 family. 23 There are -- you know, you could go through the 24 PSI as many times as you want. But I think the way I 25 would characterize the PSI and the defendant's response 30</p>
<p>1 is to all the questions that were asked of him, he 2 didn't really have a whole lot to say. I just want to 3 get out of here, I want to get sentenced. I want to get 4 done. Yeah, we went in there, we were using drugs, he 5 had a knife, and I killed him. That's about all he's 6 saying. 7 That's not a justification. That's not an 8 explanation. It's not legitimate. It's not truthful. 9 It's not -- it's not from the heart. 10 So, you know, again we think that because of 11 the nature of what happened here and the fact that 12 according to the PSI he is a high risk to reoffend, we 13 are concerned about that. 14 We would hope that this young man could be 15 rehabilitated, and we would hope that when he comes out 16 of whatever sentence this judge and this court fashions, 17 that he would be able to return back into the community 18 safely and to be able to be a productive member of 19 society. 20 We think this -- there is a death here. This 21 is a young man who went to a party. Yeah, so they were 22 using dope. That doesn't justify the killing. There's 23 nothing here that I can see that justifies this death. 24 It's just not explainable under these circumstances. 25 So we think that this court ought to hand down 31</p>	<p>1 a sentence that sends a message to the rest of the 2 people in this state that we're not going to tolerate 3 this type of activity. And we would recommend that the 4 court impose a sentence of eight fixed and two years 5 indeterminate. And again, we make that argument based 6 on the fact that there's no justification being made 7 here. There's no explanation that makes any sense. 8 This is a death. And this is something that we as a 9 society need to take a stand on and let people know 10 we're not going to tolerate. 11 And Your Honor, the only other thing I would 12 have is that -- I'd like to have Ms. Larsen speak when 13 I'm finished here. But the only thing else that I have, 14 Judge, is that we're not ready to submit restitution 15 today. We have -- she has some claims coming for the 16 costs of the funeral that we would like to submit. And 17 we'd ask for 30 days or so to submit that. 18 I don't think I have anything else, Your Honor. 19 I would ask that the court allow Ms. Nancy Larsen to 20 make her statement. 21 THE COURT: All right. Before that happens, 22 any objection to allowing additional 30 days for a 23 restitution submission? 24 MR. SCHULTHIES: No, sir. 25 THE COURT: Very well. So you'll get that in 32</p>

APPENDIX B

Court Proceedings before Hon. Stephen S. Dunn, Judge

<p>1 mean to do what I did. And it's something I have to --</p> <p>2 it's the regret I have to live with for the rest of my</p> <p>3 life. And I suffered from it, from PTSD. I mean I'm</p> <p>4 not -- that's not me, you know, the type of person that</p> <p>5 would take somebody else's life.</p> <p>6 And I just want -- my heart really goes out to</p> <p>7 you guys. It wasn't me. It was -- my life was --</p> <p>8 THE COURT: Address me, not to them.</p> <p>9 THE DEFENDANT: And my life was fueled by a</p> <p>10 night of drugs and alcohol, and it plays a big factor in</p> <p>11 it. When your first time using, using 30 CC's and</p> <p>12 snorting it and smoking it, and you would tend to</p> <p>13 hallucinate and -- you know, and hear things, see</p> <p>14 things. And it just messes with your mind completely.</p> <p>15 And I just want to say that -- I just ask for</p> <p>16 forgiveness. And that's about all I've got to say.</p> <p>17 THE COURT: All right. Thank you, Mr. Bruce.</p> <p>18 All right. Is there any reason I can't proceed</p> <p>19 with sentencing at this point?</p> <p>20 MR. SCHULTHIES: No, sir.</p> <p>21 THE COURT: Okay. Mr. Parris, you're okay with</p> <p>22 that?</p> <p>23 MR. PARRIS: I am, Your Honor.</p> <p>24 THE COURT: All right. Now let me be clear</p> <p>25 about a couple of things. First, asle be clear about</p> <p align="center">37</p>	<p>1 what I'm considering and what I'm not.</p> <p>2 First of all, I'll assume for purposes of the</p> <p>3 discussion that if they had talked to any member of your</p> <p>4 family, your counselor, and so forth, that they would</p> <p>5 have given you positive comments and recommendations.</p> <p>6 I'll assume that. I don't have any reason not to assume</p> <p>7 that. You can't sit on this bench very long and not</p> <p>8 know that that's the kind of thing you're going to hear</p> <p>9 from family members and close friends and so forth. So</p> <p>10 I'll assume that is a given. All right?</p> <p>11 Secondly, I am not -- there's been a lot of</p> <p>12 speculation this morning about what happened. All I</p> <p>13 know for sure, based on admissions that have been</p> <p>14 made -- and there's been speculation on both sides --</p> <p>15 all I know for sure is that in a substantial period of</p> <p>16 drug and alcohol abuse on that evening, a fight ensued</p> <p>17 and you stabbed somebody to death. That I know for</p> <p>18 sure.</p> <p>19 And though I don't know exactly what was going</p> <p>20 through people's minds when this occurred, but as a</p> <p>21 result of whatever occurred that evening, everybody else</p> <p>22 has clammed up, and I don't know anything else. I know</p> <p>23 that a body got stuffed into a trash can. I know that,</p> <p>24 and that's reflective. But I don't know anything else,</p> <p>25 because nobody will talk about it.</p> <p align="center">38</p>
<p>1 And so that's the basis upon which I'm imposing</p> <p>2 the sentence today: Factually.</p> <p>3 Now -- so I'm not taking into account all the</p> <p>4 concerns that you expressed legitimately,</p> <p>5 Mr. Schulthies, about what the State said about what may</p> <p>6 have been a motivation and so forth. I don't know any</p> <p>7 of that. And so I'm not taking any of that into</p> <p>8 account. I want that to be clear.</p> <p>9 Now secondly -- or thirdly, I'm probably at</p> <p>10 that point now -- I've got to decide -- and you</p> <p>11 appropriately, Mr. Schulthies, bring up often the Two</p> <p>12 Hill decision and the four elements criteria that I'm</p> <p>13 supposed to account for in sentencing.</p> <p>14 I don't agree with your analysis of the LSI.</p> <p>15 In fact, I went back and looked at that again, and then</p> <p>16 looked at it again as you were making comments. And if</p> <p>17 you look at the LSI in this particular case, the LSI is</p> <p>18 34. It's a high LSI. I know that you don't think it's</p> <p>19 a good indication of recidivism, but studies have</p> <p>20 indicated otherwise. But I look at the high domains.</p> <p>21 There are eight domains in an LSI. That's a</p> <p>22 Level of Service Inventory. What kind of services does</p> <p>23 this person need in their life? And what is reflective</p> <p>24 of the kind of behavior that you can expect going</p> <p>25 forward?</p> <p align="center">39</p>	<p>1 The high domains here are criminal history.</p> <p>2 That's significant. Education and employment. He</p> <p>3 doesn't have much of that in his background. Attitudes</p> <p>4 and orientation. Accommodation. Emotional. Personal.</p> <p>5 Leisure and recreation. Those domains are all in the</p> <p>6 high category.</p> <p>7 The low or moderate, there are no lows. All</p> <p>8 the moderate ones are financial, which is interesting</p> <p>9 because he doesn't have any assets. Alcohol and drugs,</p> <p>10 which is also interesting, because this was fueled by</p> <p>11 alcohol and drugs on that evening. Family and marital.</p> <p>12 Doesn't have much of a family history except for a good</p> <p>13 childhood. And then companions, which I don't</p> <p>14 understand how that's low; because even he acknowledges</p> <p>15 that his problem area is companions.</p> <p>16 And so the low area -- the moderate areas in</p> <p>17 the LSI are reflective of concerns that I have, and</p> <p>18 everything else is high. So that's significant.</p> <p>19 So I take all those factors into account. And</p> <p>20 we realize that someone lost their life here in the</p> <p>21 pursuit of criminal activity. No question about that.</p> <p>22 The use of illegal drugs. We have -- you're</p> <p>23 right. It's not a hugely significant prior criminal</p> <p>24 history, but it's significant enough -- DUIs, petit</p> <p>25 thefts, pharmacy drugs, minor in possession of pot,</p> <p align="center">40</p>

Court Proceedings before Hon. Stephen S. Dunn, Judge

1 those kinds of things are reflective of a life that's on
2 the wrong path.
3 Do you understand what I'm saying, Mr. Bruce?
4 THE DEFENDANT: Yes.
5 THE COURT: Your life was on the wrong path.
6 It was headed down, not up.
7 THE DEFENDANT: Yes.
8 THE COURT: That's, I think, a pretty close
9 correlation to the LSI, which is high risk.
10 So the maximum penalty to be imposed in an
11 involuntary manslaughter case is ten years. I'm
12 imposing that ten-year sentence, and I'm imposing a
13 fixed term of five years and an indeterminate term of
14 five years.
15 I am imposing court costs of \$240.50, a fine of
16 \$2,500. Restitution I'll leave open for 30 days.
17 Public defender fees of \$750. A DNA sample will be
18 supplied to the Department of Corrections within
19 ten days. And remanding you to the Department of
20 Corrections for imposition of sentence.
21 You have 42 days in which to file an appeal of
22 this sentence. If you wish to appeal and cannot afford
23 it, you can apply for an attorney and the costs of the
24 appeal. Thank you.
25 (End of proceedings this date.)